

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Julio S. Calvario Garcia v. Pam Bondi, et al.

Calvario Garcia v. Bondi · No. 2:25-cv-02177-CDS-EJY · Decided January 22, 2026

SUMMARY

The United States District Court for the District of Nevada denied without prejudice the plaintiff’s motions for judgment on the pleadings and default judgment in an immigration action. The court held that the plaintiff had not properly served the defendants under Federal Rule of Civil Procedure 4(i), particularly because he had not shown service on the United States Attorney for the District of Nevada.

CASE DETAILS

COURT	United States District Court for the District of Nevada
WRITING FOR THE COURT	Cristina D. Silva
JURISDICTION	United States District Court for the District of Nevada
DECIDED	January 22, 2026
DOCKET	2:25-cv-02177-CDS-EJY
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff filed an immigration action and moved for judgment on the pleadings and default judgment. The district court denied both motions without prejudice because plaintiff had not properly served the defendants.
STANDARD OF REVIEW	The order applies the Federal Rules of Civil Procedure governing service of process and the prerequisites for judgment on the pleadings and default judgment; no distinct appellate standard of review is stated.
PRECEDENTIAL VALUE	unknown
PARTIES	Julio S. Calvario Garcia v. Pam Bondi, Joseph Mazzara, Charles Wall, Shelby Stunt

TOPICS

- service of process
- motion for judgment on the pleadings
- default judgment
- personal jurisdiction
- immigration

PRACTICE AREAS

civil procedure

immigration

QUESTIONS PRESENTED

1. Whether plaintiff was entitled to judgment on the pleadings before properly serving the defendants.
2. Whether plaintiff was entitled to default judgment before properly serving the defendants.
3. Whether plaintiff had satisfied the Federal Rule of Civil Procedure 4(i) requirements for serving the United States and federal defendants.
4. Whether the court could exercise personal jurisdiction over defendants who had not been properly served.

HOLDINGS

1. Plaintiff did not satisfy Federal Rule of Civil Procedure 4(i) because, although he mailed the summons and complaint to the United States Attorney General, he did not show that he personally served the United States Attorney for the District of Nevada or mailed the papers to that office's civil-process clerk.
2. The court lacked personal jurisdiction over the defendants because they had not been properly served under Rule 4.
3. Plaintiff was not entitled to judgment on the pleadings or default judgment because the motions were filed before proper service of process and before the defendants' response obligations began.
4. The court did not dismiss the action at that time, but warned that failure to timely serve the United States could require dismissal without prejudice or an order allowing service within a specified time.

KEY QUOTATIONS

“Because proper service has not yet been effectuated, Calvario Garcia’s motions are denied without prejudice.” (at 1)

“Consequently, this court lacks jurisdiction over the defendants.” (at 2)

“And, until a defendant has been served under Rule 4, a plaintiff is not entitled to serve papers under Rule 5 before the defendant or defendants have been properly served under Rule 4.” (at 2)

FACTUAL BACKGROUND

Julio S. Calvario Garcia brought an immigration action against federal officials and agencies-related personnel, including the Attorney General of the United States. He mailed a summons and copy of the complaint to the United States Attorney General in Washington, D.C., but did not show that he served the United States Attorney for the District of Nevada or that office's civil-process clerk. He then moved for judgment on the pleadings and default judgment before proper service had been completed.

PROCEDURAL HISTORY

Calvario Garcia filed the action nearly three months before the order and submitted proof that he mailed a summons and complaint to the United States Attorney General. He did not provide proof that he served the United States Attorney for the District of Nevada or that he mailed the papers to that office's civil-process clerk. The court therefore denied both pending motions without prejudice and advised plaintiff of the requirements and deadline for service.

DISPOSITION

other

CASES CITED

- R. Griggs Group Ltd. v. Filanto Spa, 920 F. Supp. 1100, 1103 (D. Nev. 1996)
- Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694 (1988)
- Neumont Univ., LLC v. Nickles, 304 F.R.D. 594, 597 (D. Nev. 2015)
- SEC v. Ross, 504 F.3d 1130, 1138 (9th Cir. 2007)
- Jackson v. Hayakawa, 682 F.2d 1344, 1347 (9th Cir. 1982)
- Beecher v. Wallace, 381 F.2d 372 (9th Cir. 1967)
- Kaden v. Chamisa Arts, Inc., 2016 WL 7616692, at *3 (W.D. Tex. July 15, 2016)

OPINION

1 2 UNITED STATES DISTRICT COURT DISTRICT OF NEVADA 3 4 Julio S. Calvario Garcia,
Case No. 2:25-cv-02177-CDS-EJY 5 Plaintiff Order Denying Without Prejudice the Plaintiff's
Motion for Judgment on the 6 v. Pleadings and Motion for Default Judgment 7 Pam Bondi, et al.,
[ECF Nos. 5, 6] 8 Defendants 9 10 Pro se plaintiff Julio S. Calvario Garcia brings this immigration
action against various 11 defendants.1 See Compl., ECF No. 1.

Calvario Garcia has also filed a motion for judgment on the 12 pleadings and a motion for default judgment. Mots., ECF Nos. 5, 6. Because proper service has 13 not yet been effectuated, Calvario Garcia's motions are denied without prejudice. 14 I. Discussion 15 Under the Federal Rules of Civil Procedure, plaintiff has the burden to establish that he 16 properly and timely effectuated service of process upon a defendant.

See Fed. R. Civ. P. 4(c)(1) 17 ("The plaintiff is responsible for service of a summons and complaint within the time allowed 18 under subdivision (m)...."). "Service of process" is the legal term describing a formal delivery of 19 documents giving the defendant notice of a pending lawsuit. R. Griggs Group Ltd. v. Filanto Spa, 920 20 F. Supp. 1100, 1103 (D. Nev. 1996) (citing Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694 21 (1988)). "Service of process is the means by which a court asserts jurisdiction over the person." 22 Neumont Univ., LLC v. Nickles, 304 F.R.D.

594, 597 (D. Nev. 2015) (quoting *SEC v. Ross*, 504 F.3d 23 1130, 1138 (9th Cir. 2007)). The proper method of service depends on who the defendant is and 24 where the defendant is located. 25 1 Pam Bondi, the Attorney General of the United States; Joseph Mazzara, U.S. Department of Homeland 26 Security's Office of General Counsel; Charles Wall, U.S. Department of Homeland Security's Office of the Principal Legal Adviser Immigration and Customs Enforcement; and Shelby Stunt, U.S. Customs and Border Patrol's Office of Chief Counsel.

1 As relevant here, to sue the United States, a federal agency, or a federal employee, a 2 plaintiff must comply with the special service-of-process rules under Rule 4(i) of the Federal 3 Rules of Civil Procedure. To sue a federal agency or a federal employee in their official capacity, a 4 plaintiff must both (1) satisfy the requirements for serving the United States and (2) send a 5 summons and copy of the complaint by registered or certified mail to the specific agency or 6 employee being sued.

Fed. R. Civ. P. 4(i)(2). 7 To satisfy the Rule 4(i) requirements for serving the United States, a plaintiff must meet 8 three requirements. First, a plaintiff must either personally deliver a summons and a copy of the 9 complaint to the United States Attorney in the district where the action is brought, or send a 10 copy of each by registered or certified mail to the U.S. Attorney's civil-process clerk in that 11 district.

Fed. R. Civ. P. 4(i)(1)(A)(i-ii). Second, a plaintiff must send a summons and copy of the 12 complaint to the United States Attorney General in Washington, D.C., by registered or certified 13 mail. Fed. R. Civ. P. 4(i)(1)(B). And while not relevant here, the third requirement is that if the 14 lawsuit involves a non-party federal agency or officer, the plaintiff must send a summons and 15 copy of the complaint to that entity or person by registered or certified mail.

Fed. R. Civ. P. 16 4(i)(1)(C). 17 The service-of-process requirements for suing a federal employee in their personal 18 capacity is similar, but slightly different. First, a plaintiff must (1) satisfy the above-listed 19 requirements for serving the United States and (2) serve the employee in compliance with Rule 20 4(e), (f), or (g), whichever subsection is applicable.

See Fed. R. Civ. P. 4(i)(3). 21 Once a defendant has been served with a summons and complaint, then their time to 22 respond begins to run. However, if a defendant has not been served "there is no personal 23 jurisdiction." *Jackson v. Hayakawa*, 682 F.2d 1344, 1347 (9th Cir. 1982) (citing *Beecher v. Wallace*, 381 24 F.2d 372 (9th Cir. 1967)). 25 Here, Calvario Garcia has satisfied the second prong of suing the United States because 26 he has sent a summons and copy of the complaint to the U.S. Attorney General in Washington, 1] D.C., by registered or certified mail.

See ECF No. 4 (copy of summonses and certified mail 2||receipts). But Calvario Garcia failed to satisfy the first requirement. Specifically, he has failed to 3}| provide proof that he either personally delivered a summons and a copy of the complaint to the 4] United States Attorney for

the District of Nevada or that he sent a copy of each by registered or 5] certified mail to the U.S. Attorney's civil-process clerk for the District of Nevada.

Consequently, 6] this court lacks jurisdiction over the defendants. And, until a defendant has been served under 7] Rule 4, a plaintiff is not entitled to serve papers under Rule 5 before the defendant or defendants have been properly served under Rule 4. See *Kaden v. Chamisa Arts, Inc.*, 2016 WL 7616692, at *3 (W.D. Tex. July 15, 2016) (“[F]or any defendants who the plaintiff has not yet 10] properly served, she must serve them with the summons, complaint, and amended complaint.” 1] (citation modified)).

This means that plaintiffs motions are also improperly filed, so they are 12] denied without prejudice. B This action was filed almost three months ago, so the court reminds Calvario Garcia that 14] to timely effect service on the United States, he must serve a copy of the summons and complaint upon the Attorney General of the United States and the local United States Attorney 16] within 120 days after filing of the complaint.

Fed. R. Civ. P. 4(i), (m). If he fails to do so, then this 17] action must be dismissed without prejudice against the defendants, or the court must order that 18] service be made within a specified time. Id. II. Conclusion 20 IT IS THEREFORE ORDERED that plaintiff's motion for judgment on the pleadings [ECF No. 5] is DENIED without prejudice. 22 IT IS FURTHER ORDERED that plaintiff's motion for default judgment [ECF No. 6] is DENIED without prejudice. /) 24 Dated: January 22, 2026 LZ ‘ 25 (6 Cristiz aD.

Si va vee States District Judge /